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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/724,313	11/28/2000	Anthony D. Gonzalez	682.0021USU	6496

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EXAMINER

LEVY, NEIL S

ART UNIT

PAPER NUMBER

1616

DATE MAILED: 02/04/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

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DATE MAILED: *S*

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

- Responsive to communication(s) filed on 5/21/01
- This action is FINAL.
- Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

- Claim(s) 1 - 24 is/are pending in the application.
Of the above, claim(s) _____ is/are withdrawn from consideration.
- Claim(s) _____ is/are allowed.
- Claim(s) 1-24 is/are rejected.
- Claim(s) _____ is/are objected to.
- Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- The drawing(s) filed on _____ is/are objected to by the Examiner.
- The proposed drawing correction, filed on _____ is approved disapproved.
- The specification is objected to by the Examiner.
- The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- All Some* None of the CERTIFIED copies of the priority documents have been
- received.
- received in Application No. (Series Code/Serial Number) _____
- received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

- Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- Notice of Reference Cited, PTO-892
- Information Disclosure Statement(s), PTO-1449, Paper No(s). 2
- Interview Summary, PTO-413
- Notice of Draftsperson's Patent Drawing Review, PTO-948
- Notice of Informal Patent Application, PTO-152

-SEE OFFICE ACTION ON THE FOLLOWING PAGES-

Receipt is as knowledged of IDS and Declaration.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 2, 4, 6, 9, 19 and 22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Abbreviations need to be spelled out at first appearance in claims voluntary optional component (VOC). Claim 2 has 2 abouts, claims 4, 6, 9, 22 could be construed to be O repellent "up to" – please explain or amend. Claim. In claim 19, Further comprising implies there is a different VOC, but we don't know this it may be the claim is to 5-30% alcohol as the VOC; further it is not clear what the weight % of claim 19 is based on: the total composition, the voc component total, or the 1-55% VOC. Likewise with claim 23 – what is/are the vehicle (5). Is water considered to be an aerosol vehicle?

Claims 1-24 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. One of ordinary skill in the art would not understand the requirements to provide an aerosol vehicle as cosmetically acceptable in the instant

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format, this is beyond the scope of the specification – water can be (as claimed) the vehicle; in order to have water as an aerosol, the spray would have to be extremely fine to produce the 5 or so micron size drop, and it is doubtful that the repellent and VOC's could be so included.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1-12, 16-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Dohara et al 5055299.

See example 1: pyrethroid, up to 50%, non-VOC of isopropyl alcohol @ 25%, VOC ether at 45% and water/arumonia at 30%. The instant methods are nominal method claims intended for skin use, with perfumes, etc; at PH7 – The VOC can be as low as 10% (col. 2, lines 45, 46), the insect repellent at .01-2% (col. 2, lines 25-29).

Claims 1-9, 16, 20-22 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Mailander et al 330391.

See example F: insert repellent, 1%, Non-VOC 1% ester; ether (col. 7, lines 20-23, up to 3%) and VOC – isobutane, at 26%; Mineral spirits at 20% (col. 14, B), with water up to 50%.

Claims 1-11, 13, 15, 16, 20-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Vlasblom 5565208.

The methods (col. 1, lines 37-41) instantly claimed, of the instant 5-38% repellent, .5-30% non-VOC ethoxglate, 5-30% VOC – dipropylene – ether (col. 2) and of – Limonene – at 15-70% (col. 1, lines 54-67). Water up to 50%, may be added (col. 2 line 39 to 60), thus, the instant 5-40% as met.

Claims 1-24 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Chaussee 4970220.

One in the art is given the instant components and concentration, (col. 3, line 58 – col. 4, line 47) to provide as desired aqueous based aerosol compositions applied as cosmetically acceptable, to the skin – the instant methods (col. 8, line 7-27, 40-45), Example XVIII shows concurrent inclusion of insect repellent (DEET) sun screen (tetrahydro-furfural) and stearyl alcohol – Glyceryl stearate/PEG stearate film – formers. When desired to use as aerosol, a mix of Isobutane/ propane is presented, as a 5% addition to the base composition (col. 13, line 58-63). Alternative aerosol preparations use ethanol (Example XIII). Example XVIII shows total non-voc over 5%, excluding water. Water can be used at less than 40% (Example VI).

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stewart 5916541 in view of Vlasblom 5565208 or Chaussee – 4970220 and Mailander et al 3303091.

Stewart provides sunscreen/insect repellent composition with film formers (abstract) for application to skin (col. 5, lines 50 – lines 54, col. 6) which permits water and soap removal. Deet or Citronella range from 7-33% (col. 4, lines 36-40), sunscreen at. 2-8% (col. 4, line 56), film forming at 3% (col. 4, bottom) with water and alcohol (propylene glycol example 1) at 32 and 2% respectively, thus, the non-voc phases. There is no suggestion for convenient application means, as tube, spray, aerosol etc. Vlasblom and Chaussee (above) are shown as representative exemplification of the use of protective compositions applicable to skin for insect repellency and sunscreen protect an respectively. The VOC of Vlasblom is not expressed as the hydrocarbon propellants instantly utilized, However, Chaussee shows as little as 5% of this propellant is an effective amount to provide compositions to skin. Mailander further show the early presentation of use of emulsifiers with pesticides/insect repellents instantly claimed utilizing the instant propellants with an aqueous based composition.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made desiring to utilize a combination sun/insect topical skin protectant,

to use Stewarts, modified as shown by Chaussee or Vlasblom and Mailander to provide easy application as an aerosol.

The amounts and proportions of each ingredient are result effective parameters chosen to obtain the desired effects. It would be obvious to vary the amount of each ingredient to optimize the effect desired (increased concentration, increased freeze protection increased safety) and the use of ingredients for the functionality for which they are known to be used is not basis for patentability.

All the critical elements of the instant invention are disclosed.

Applicant has not provided any objective evidence of criticality, nonobvious or unexpected results that the administration of the particular ingredients' or concentration provides any greater or different level of prior art expectation as claimed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is 703-308-2412. The examiner can normally be reached on Tuesday to Friday from 7 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees, can be reached on (703) 308-4628. The fax phone number for the organization where this application or proceeding is assigned is 703-308-4242.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1235.

Levy/LR

January 29, 2002

Neil Levy
NEIL S. LEVY
PRIMARY EXAMINER